

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI STATE COMMITTEE FOR
SOCIAL WORKERS,

Petitioner,

v.

THERESA J. SCHILLING,

Respondent.

No. 13-0692 SW

DECISION

Petitioner State Committee for Social Workers has cause to discipline Respondent Theresa J. Schilling's clinical social worker license.

Procedure

The Committee filed its complaint on May 1, 2013 and Ms. Schilling answered on May 21, 2013.

On September 25, 2013, we denied both the Committee's motion for summary decision, and Ms. Schilling's motion to dismiss.

We held a hearing on November 5, 2013. The Committee was represented by its counsel, Stephen Doerhoff. Ms. Schilling appeared in person and represented herself. This matter became ready for decision on January 22, 2014, when the parties filed their respective post-hearing briefs.

In making our Findings of Fact below, we observe that this Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992). When there is a direct conflict in the testimony, we must make a choice between the conflicting testimony. *Id.*

Findings of Fact

1. Theresa J. Schilling¹ is licensed by the State Committee for Social Workers as a clinical social worker. Her license was current and active at all times relevant to this proceeding.

2. Ms. Schilling practiced clinical social work, including the provision of psychotherapy, at a clinic, ACCESS Family Health Care, in Neosho, Missouri from June 2011 until April 2012.

3. During the time Ms. Schilling was working at ACCESS, her license was on probationary status as a result of a settlement previously reached by her and the Committee.² As part of that settlement, she was to be supervised by a clinical social worker. Her supervisor was Kelli Farmer. Ms. Schilling and Ms. Farmer met about twice a month from July 2011 to April 2012.

4. From August 2011 until February 2012, over the course of nine appointments and in her capacity as a clinical social worker, Ms. Schilling provided psychotherapy services for the treatment of mental and emotional conditions to a client, L.S., at ACCESS.

5. On February 6, 2012, Ms. Schilling met with Ms. Farmer. Ms. Schilling said she had met a client at ACCESS; there was an immediate, mutual attraction between her and the

¹ Respondent took the surname “Schilling” in July 2012. Before that time, she was known by the surname “Smith.” Some exhibits herein refer to Respondent as “Theresa Smith,” because they were created prior to July 2012. For simplicity, we will refer herein to Respondent by the surname Schilling.

² The issue that prompted the parties to enter that settlement agreement is unrelated to the issue that prompted the Committee to file the instant complaint.

client; and they were interested in pursuing a relationship, which Ms. Farmer gathered was of a romantic nature. Ms. Schilling said she had decided not to establish a therapeutic relationship with the client, and did not establish one. She did not tell Ms. Farmer that she had already provided professional counseling services to the client for several months. Ms. Farmer did not tell Ms. Schilling that it would be alright to pursue a personal relationship with L.S. even if a therapeutic relationship had already been established.

6. Ms. Schilling and L.S. terminated their professional relationship on or about February 15, 2012. She did not provide professional counseling services to him after that time.

7. On March 17, 2012, Ms. Schilling signed a lease with L.S. to rent a room in his trailer, and moved in with him in early April 2012. Under the terms of the lease, she made a security deposit and small pet deposit, and paid \$250 per month in rent.

8. ACCESS terminated Ms. Schilling from employment in April 2012, based on her relationship with L.S.

9. Ms. Schilling and L.S. married on July 23, 2012, and after their marriage engaged in a sexual relationship.

Conclusions of Law

We have jurisdiction. §§ 337.630.2 and § 621.045, RSMo.³

The Committee is responsible for the licensure and discipline of clinical social workers. §§ 337.612 and 337.630. The Committee bears the burden herein of proving that cause for discipline exists, § 337.630.2, and must do so by a preponderance of the evidence, *see Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrated “cause” to discipline by showing preponderance of evidence). A preponderance of

³ References to RSMo are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo.App. W.D. 2000)).

The Committee’s complaint provides notice of the grounds for discipline. *See Duncan v. Mo. Bd. for Architects*, 744 S.W.2d 524, 539 (Mo. App. E.D. 1988). We cannot impose discipline on grounds not adequately pleaded. *Id.*

The Committee claims cause exists to discipline Ms. Schilling under three subdivisions of § 337.630.2:

The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any license required by sections 337.600 to 337.689 or any person who has failed to renew or has surrendered the person’s license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a social worker licensed pursuant to this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provisions of sections 337.600 to 337.689, or of any lawful rule or regulation adopted pursuant to sections 337.600 to 337.689;

(15) Being guilty of unethical conduct as defined in the ethical standards for clinical social workers adopted by the committee by rule and filed with the secretary of state.^[4]

⁴ The Committee additionally cited subsection (13) of § 337.630.2, violation of professional trust or confidence, in its Complaint, p. 4, ¶ 8. But the Committee did not address that ground in its post-hearing briefing, and in its conclusion therein asked only that we find cause for discipline under subsections (5), (6) and (15). *See* Petitioner’s Proposed Findings of

The factual bases alleged by the Committee in its complaint all center on Ms. Schilling's relationship with L.S.

I. Section 337.630.2(5)

Subsection (5) provides for discipline in the case of "misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a social worker[.]" The Committee argues in its post-hearing briefing that discipline lies under this subsection because "Ms. Schilling was deceitful to her supervising clinical social worker when she lied about her relationship with" L.S.⁵

As noted above, a complaint provides notice of the grounds for discipline, and we cannot impose discipline on grounds not pleaded. *Duncan*, 744 S.W.2d at 539. "[A] bare recitation of [a] statute, *without factual support*, is insufficient to satisfy due process." *Moheet v. State Bd. of Regis. for Healing Arts*, 154 S.W.3d 393, 400 (Mo. App. W.D. 2004) (*citing Mo. Dental Bd. v. Cohen*, 867 S.W.2d 295, 296-297 (Mo. App. W.D. 2003)) (emphasis in original).

Here, the Board recited and cited § 337.630.2(5), but provided no factual support for a claim of misconduct based on deceiving a supervisor. Ms. Schilling's supervision, and what she told her supervising clinical social worker, are not mentioned in the complaint at all. Accordingly, the complaint did not provide adequate notice to Ms. Schilling that the Committee was pursuing discipline on such grounds.

The Committee makes no other argument with respect to discipline under subsection (5).

No cause for discipline exists under § 337.630.2(5).

Fact, Conclusions of Law, and Argument, p. 11. Accordingly, we deem any claim under subsection (13) to have been abandoned by the Committee.

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Petitioner's Proposed Findings of Fact, Conclusions of Law, and Argument, p. 9.

II. Sections 337.630.2(6) and (15)

Subsection (6) provides for discipline for the violation of “any lawful rule or regulation adopted pursuant to sections 337.600 to 337.689.” Subsection (15) provides for discipline when the licensee is “guilty of unethical conduct as defined in the ethical standards for clinical social workers adopted by the committee by rule and filed with the secretary of state.”

The Committee alleged⁶ that Ms. Schilling violated 20 C.S.R 2263-3.010(1)⁷, which generally provides that “the ethical standards/ disciplinary rules for members of the [clinical social worker] profession...are mandatory.” The regulation further provides that “failure of a member of the profession to abide by any ethical standard/disciplinary rule in” Chapter 3, Title 20, Division 2263 of the Code of State Regulations “shall constitute unethical conduct and be grounds for disciplinary proceedings.” *Id.*

As for ethical standards and disciplinary rules, the Committee alleged⁸ that Ms. Schilling violated 20 C.S.R 2263-3.040(1), an ethics regulation addressing relationships between social workers and their clients, which provides:

A member of the profession shall not enter into or continue a dual or multiple relationship, including social relationship, business relationship, or sexual relationship, as defined by the committee, with a current client or with a person to whom the member has at any time rendered psychotherapy (clinical social work) or other professional social work services for the treatment or amelioration of mental and emotional conditions.^{9]}

⁶ Complaint, p. 2, ¶ 5; and p. 5, ¶ 15.

⁷ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

⁸ Complaint, pp. 2-3, ¶ 6; and p. 5, ¶ 18.

⁹ The Committee also alleged a violation of subsection (5) of 20 C.S.R 2263-3.040, which prohibits a licensee from entering into a professional relationship when her objectivity or competency could be called into question, for example, when the licensee already has a social relationship with the person. The Committee does not brief or even mention the subsection in its post-hearing briefing. Accordingly, we deem any claim related to 20 C.S.R 2263-3.040(5) to have been abandoned by the Committee.

The Committee also pointed to 20 CSR 2263-1.010(1)¹⁰, which provides a definition of dual or multiple relationships:

(F) “Dual relationship” or “multiple relationships” occur when members of the profession relate to clients in more than one (1) relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively.

The Committee claims that Ms. Schilling engaged in prohibited dual or multiple relationships, whether simultaneously or consecutively. We conclude she engaged in such prohibited relationships, consecutively.

In her capacity as a clinical social worker, Ms. Schilling provided psychotherapy services to a client, L.S., for about nine months. That relationship was a professional one. At some point during that relationship, and it is not clear in the record when, the two developed a romantic interest in each other. The professional relationship ended in February 2012.

In March 2012, Ms. Schilling and L.S. entered into a business relationship when Ms. Schilling entered into a lease with L.S. to rent a room in L.S.’s trailer.

In July 2012, Ms. Schilling and L.S. married and entered into a sexual relationship.

The Committee has demonstrated by a preponderance of the evidence that Ms. Schilling, a licensee, has related and relates to L.S. in more than one relationship, and in fact, at least three addressed by regulation: professional, business, and social¹¹. The Committee failed to demonstrate by a preponderance of the evidence that the professional relationship existed at the same time as a business or social relationship, *i.e.*, simultaneously. But the Committee did demonstrate that the relationships were consecutive.

¹⁰ *Id.*, p. 3, ¶ 7.

¹¹ We construe Ms. Schilling’s and L.S.’s sexual relationship to be the equivalent of a social one, as contemplated by the definitional regulation, inasmuch as the relationship is consensual and commenced when they married.

“Consecutive” means:

1 a : following esp. in a series : one right after the other often with small intervening intervals : SUCCESSIVE, SEQUENT...**b :** having no interval or break : CONTINUOUS...[.]

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 482 (1986).

According to the first part of the definition, which the Committee relies on, consecutively means sequentially, often with small intervening breaks. Here, the professional, business and social relationships at issue were sequential, and whether there was a break or interval does not matter—they were consecutive, according the first part of the dictionary definition.

Ms. Schilling relies on the second part of the definition, arguing that if there was a break between the professional and other relationships, then the Committee’s claim fails because consecutive means continuous and without breaks. We think the better reading of the regulation is to apply the first part of the dictionary definition, treating consecutive as sequential, with or without small intervening breaks, for at least two reasons.

First, the plain language of the regulation supports the Committee’s interpretation. The rules of construction used to interpret statutes apply equally to interpretation of regulations. *State ex rel. Evans v. Brown Builders Elec. Co.*, 254 S.W.3d 31, 35 (Mo. banc 2008). Under such rules, we ascertain the intent of the drafter by looking at the language used, giving effect to that intent if possible, and considering the words used in their plain and ordinary meaning. *Id.* (internal quotations and citations omitted). We also consider the words in context, and in *pari materia* with other sections of the statute, or regulation, as well as cognate sections. *Id.* (internal quotations and citations omitted).

The drafters of the definitional regulation, 20 CSR 2263-1.010(1)(F), in identifying simultaneous *or* consecutive relationships, intended that the two concepts mean different things.

Simultaneous relationships overlap, while consecutive ones do not. Reading that regulation together with a cognate section, 20 C.S.R 2263-3.040, demonstrates that the concept of “consecutive” does not require relationships to be continuous and without breaks. Under 20 C.S.R 2263-3.040(1), a dual or multiple relationship is prohibited “with a current client or” a former one, that is, “a person to whom the member has at any time rendered” professional social work services. (Emphasis added.) We construe “at any time” by looking at the language used, and read the words to mean just that. “At any time” means at any point in time, and does not require relationships to be continuous and without breaks in order to be prohibited dual or multiple relationships. The regulations were drafted to cast a wide net, in furtherance of their purpose to protect, at minimum, the clients served by the profession.

An additional reason why we agree with the Committee’s interpretation is based on evidence it offered through Terri Marty, a licensed clinical social worker, and member of the State Committee for Social Workers. Ms. Marty has more than 25 years of experience as a social worker and a master’s degree in social work. Her practice has included the provision of services in an in-patient setting, and supervision of the provision of such services in the in-patient setting.¹² Ms. Marty explained that the purpose of the Committee is to protect the public from unethical or inappropriate social work practice.¹³

Based on her training, knowledge, and experience, Ms. Marty testified that social relationships with former clients are inappropriate: “Social workers hold as a general belief...that once a person has been a client they are always a client; that you have responsibility to maintain that professional relationship even if it has ended[.]”¹⁴ Once the therapeutic

¹² Tr. 102-103; Petitioner’s Exhibit J.

¹³ Tr. 103.

¹⁴ Tr. 106.

relationship begins, the social worker has an advantage over a client, in the form of a disproportionate share of information about the client “that makes the relationship always unequal.”¹⁵

Ms. Marty further explained that social relationships with former clients risk interpersonal harm to the client, and can damage the reputation of the profession.¹⁶ The social worker also risks liability for harm to the client, and Ms. Marty is aware that social workers have been sued because of the development of personal relationships with clients.¹⁷

The passage of time or a break between a professional and personal relationship does not, in Ms. Marty’s mind, ameliorate the problems associated with a social worker engaging in a personal relationship with a former client.¹⁸ She would still consider the relationship inappropriate and impermissible.¹⁹

We conclude, in short, that the risks associated with the maintenance of a social relationship between a social worker and former client appear to exist whether the social relationship is established on the heels of a professional one, or with an interval of time in between.

In view of the foregoing, we conclude that a dual or multiple relationship can exist, for purposes of 20 C.S.R 2263-3.040(1) and the definitional regulation, 20 CSR 2263-1.010(1)(F), even if there is a break between the professional and other relationships. Here, notwithstanding any break between Ms. Schilling’s and L.S.’s professional relationship, and business and social

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Tr. 107.

¹⁹ *Id.*

relationships, Ms. Schilling engaged in consecutive dual or multiple relationships in violation of regulations and statute.

Cause for discipline exists under § 337.630.2(6) and (15), because Ms. Schilling violated 20 C.S.R 2263-3.040(1) (as defined in part by 20 CSR 2263-1.010(1)(F)), and 20 C.S.R 2263-3.010(1).

III. Ms. Schilling's remaining arguments

We have addressed Ms. Schilling's argument about the definition of consecutive, above, and rejected it.

Ms. Schilling also argues that Ms. Farmer, her supervisor, approved of the relationship with L.S., and so she (Ms. Schilling) cannot be disciplined for engaging in it. In our Findings of Fact, ¶ 5, above, we found that Ms. Farmer did not tell Ms. Schilling it would be alright to pursue a personal relationship with L.S. even if a therapeutic relationship had already been established. Accordingly, we reject Ms. Schilling's argument.

We have reviewed the remainder of Ms. Schilling's arguments, and conclude they lack merit.

Summary

Ms. Schilling is subject to discipline under §337.630.2 (6) and (15), but not under § 337.630.2(5).

SO ORDERED on January 31, 2014.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner